In the Federal Court this finding was criticised — in relation particularly to the appellant's pleading that the land was transferred at her request — on the ground that the appellant herself said that she knew nothing about business but left it all to her husband and son, and that she only came to know that the land was in the names of the respondents shortly before the issue of the writ. This, said Ong Hock Thye Ag.C.J. was fatal to the appellant's claim. Their Lordships agree with this comment to the extent that it must be accepted that the appellant did not succeed in showing that the lands were transferred to the respondents "at her request" unless, at least this expression can be extended to include a request made by her husband Quah Hong Chiam on her behalf. But their Lordships do not consider that this criticism disposes of the finding of the trial judge which their Lordships can only read as unequivocally rejecting the respondents' claim that the lands were transferred to them by way of gift a finding he was fully entitled to make on the evidence. If this claim is rejected, then the appellant must succeed, and it does not matter to the result that she failed to show that the lands were transferred at her request. Whether she made any request, direct or indirect, or not, she established that the lands were transferred by Yew Hun Eng without consideration and not by way of gift, that is both consistent with her pleading and is enough to make good her case.

Their Lordships, upon the whole of this difficult appeal, therefore are of opinion that the decision of Azmi J. ought to be restored and the judgment of the Federal Court reversed. They will advise the Head of Malaysia accordingly. The respondents must pay the appellant's costs.

Appeal allowed.

Solicitors: *Lipton & Jefferies; Coward, Chance.*

RE MAKHANLALL & CO. LTD.

[O.C.J. (Wee Chong Jin C.J.) October 18, 1968]
[Singapore — Certiorari No. 1 of 1968]

Certiorari — Whether applicable in respect of exercise by magistrate's court of statutory powers — Order prohibiting building from being used for human habitation — Certificate of building surveyor must show that immediate steps must be taken to prevent building from falling down — Excess of jurisdiction if order made in absence of such certificate — Construction of statute — Local Government Intergration Ordinance, 1963, s. 63.

This was an application for an order of *certiorari* to quash the orders of a magistrate's court under section 63(4) and 63(5) respectively of the Local Government Intergration Ordinance, 1963. On the facts the magistrate had made the orders in question on the strength of a certificate by the chief building surveyor that the building was "in danger of collapse". Section 63(4) of the Ordinance, requires the chief building surveyor to certify that "immediate steps ought to be taken to prevent the building from falling down" as a precondition to the making of an order of the magistrate's court.

Held: the magistrate's court in this case had acted in excess of its jurisdiction in making the two orders and the orders must therefore be quashed.

Case referred to:—

(1) *Nakkuda Ali* v. *Jayaratne* [1951] A.C. 66.

MOTION.

Sachi Saurajen for the applicant.

Ho Thian Cheh (State Counsel) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is a motion for an order of *certiorari* to quash an order of a magistrate's court made on the 4th day of October 1967 under section 63(4) of the Local Government Intergration Ordinance 1963 (hereafter referred to as "the Ordinance") and an order of the same magistrate's court made on the 30th day of October 1967 under section 63(5) of the Ordinance.

The material facts are not in dispute and are these. The applicants occupy the ground floor of No. 20 Malacca Street as tenant and carry on business therein as importers, exporters and commission agents. They have been such tenants for more than twenty five years. On 4th October 1967 one Tio Seng Chin who it is conceded is the Chief Building Surveyor, made a sworn complaint before a magistrate in the 9th magistrate's court, the contents of which were as follows:—

"An inspection has been made by Mr. Tan Hock Meng, Assistant Building Surveyor of this department on No. 19/20, Malacca Street, which is a three-storey brick offices building and on a free standing wall at the back.

Due to the structural defects in the structure the building and the wall are found to be in danger of collapse.

I attach herewith a certificate regarding the structural condition of the building and the wall by Mr. Tan Hock Meng, Assistant Building Surveyor of this department.

I pray for a Court Order against the occupiers under section 63(1) of the Local Government Intergration Ordinance, 1963, and a Demolition Order under section 63(4) of the said Ordinance."

The certificate referred to in the sworn complaint was in the following terms:—

"Certificate on Structural Condition of 19/20, Malacca Street and a free standing wall at the back.

I, the undersigned, hereby certify that I have inspected on 3.10.67, building No. 19/20, Malacca Street, known as Namazie Building, which is situated at the junction of Malacca Street and a back lane.

I have found that the building is in danger of collapse due to structural defects in the structure — there are big cracks from five-foot-way level to almost roof level in the East wall; rear part of West wall is cracked, out of plumb and bulging towards the back lane; structural cracks in some beams; a good number of floor joints of 2nd floor are sagging; one column on the 2nd floor is out of plumb.

Immediately adjacent to the back wall of the Namazie Building there is a free standing wall extending the full height of the Namazie Building. This wall is also in danger of collapse.

Sd: Tan Hock Meng
Assistant Building Surveyor
4.10.67."

The magistrate on the same day, purporting to act under section 63(4) of the Ordinance, made an order in the following terms:—

"DEMOLITION ORDER

(Under Section 63(4) Local Government Intergration Ordinance 1963)

To:—The owner of building

No. 19/20 Malacca Street, Singapore

WHEREAS on the 4th day of October, 1967, a certificate has been received by the court from the Assistant Building Surveyor stating that he had inspected the building, No. 19/20 Malacca Street. Singapore, on the 3rd day of October, 1967, and found that the building and the free wall adjacent to it are in danger of collapse due to structural defects.

AND, I, being satisfied that by reason of the aforesaid certificate the Assistant Building Surveyor is of the opinion that immediate steps ought to be taken to prevent the main building at No. 19/20 Malacca Street, Singapore, from falling down. I, in pursuance of subsection (4) of section 63 of the Local Government Intergration Ordinance, 1963, do hereby authorise the Chief Building Surveyor either to demolish the building or to take steps as appear to the Chief Building Surveyor to be necessary to make the building secure and the expenses thereby incurred shall be paid by the owner of the building.

GIVEN under my hand and the seal of the Ninth magistrate's court in the State of Singapore this 4th day of October, 1967."

On the 30th day of October 1967 on an application by the Chief Building Surveyor to the 9th magistrate's court, the court made an order under section 63(5) in the following terms:—

"COURT ORDER

(Under Section 63(5) Local Government Intergration Ordinance, 1963).

WHEREAS on the 4th day of October, 1967, an Order was made by the court authorising the Chief Building Surveyor either to demolish the building known as No. 19/20, Malacca Street, Singapore, or to take steps as appear to the Chief Building Surveyor to be necessary to make the building secure and that the expenses thereby incurred shall be paid by the owner of the building:

AND WHEREAS on the 30th day of October, 1967, an application was made in this court by the Chief Building Surveyor, Mr. Tio Seng Chin, in pursuance of section 63(5) of the Local Government Intergration Ordinance, 1963:

NOW I in pursuanre of the Local Government Intergration Ordinance, 1963, section 63(5), hereby prohibit the building known as No. 19/20, Malacca Street, from being used for human habitation.

GIVEN under my hand and the seal of the Ninth magistrate's court at Singapore this 30th day of October, 1967."

Armed with the order of the 30th October 1967 the Chief Building Surveyor, as required by the provisions of section 63(5) and section 106(14) of the Ordinance, served notice of this order on the applicants. The notice under section 106(14) was in the following terms:—

"CHIEF BUILDING SURVEYOR'S DEPARTMENT.

NOTICE OF COURT ORDER

(Under Section 106(14) Local Government Intergration Ordinance, 1963).

C.C. No. 1 of 1967 About: 19/20 Malacca Street
To: Messrs. Makhanlall & Company Limited
Of: No. 19/20, Malacca Street

TAKE NOTICE that in pursuance of section 63(5) of the Local Government Intergration Ordinance, 1963 an Order (copy attached) has been made by the magistrate's court on the 30th day of October, 1967, prohibiting the building known as No. 19/20, Malacca Street, Singapore, from being used for human habitation.

AND that in pursuance of section 106(14) you and your family are required within fourteen days after service hereof upon you to obey the same and to cease to inhabit the above-mentioned building.

If you make default in compliance with the requisition of this Notice, a Summons may be issued requiring your attendance before a magistrate's court to answer a complaint which may be made for the purpose of enforcing the performance of the said requisition, and in default you shall be liable on conviction to a fine not exceeding $50 a day during your disobedience to the Order, and the court shall, upon application by the Chief Building Surveyor, make a summary Order for the ejectment of you and your family, and the same may be carried into effect by any police officer or officers."

Section 63(4) provides as follows:—

"Notwithstanding the provisions of sub-sections (1), (2) and (3) of this section where the Chief Building Surveyor is of opinion that immediate steps ought to be taken to prevent a building or anything affixed thereon, from falling down, he may so certify to a magistrate's court, and a magistrate's court, on receipt of such a certificate, shall make an order authorising the Chief Building Surveyor either to demolish the building or to take such other steps as appear to the Chief Building Surveyor to be necessary to render the building secure and the expenses thereby incurred shall be paid by the owner of the building."

Section 63(5) provides as follows:—

"Where an order is made under the provisions of sub-section (4) of this section in respect of any building which is occupied, the court shall on the application of the Chief Building Surveyor make an order prohibiting the building from being used for human habitation and the provisions of sub-section (14) of section 106 of this Ordinance shall apply as if such order were a closing order made under that section."

The first question to be considered is whether a magistrate's court acting under the powers conferred on it by section 63(4) of the Local Government Intergration Ordinance is subject to the jurisdiction of the High Court by way of *certiorari*. The Privy Council case of

Nakuda Ali v. *Jayaratne* [1] at page 78 has stated the principle to be applied in the following words:—

"That principle is most precisely stated in the words of Atkin L.J. (as he then was) in *Rex* v. *Electricity Commissioners*: '. . . . the operation of the writs has extended to control the proceedings of bodies who do not claim to be, and would not be recognised as, courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in the writs'. As was said by Lord Hewart C.J., in *Rex* v. *Legislative Committee of the Church Assembly* when quoting this passage, 'In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially."

The bare words of section 63(4) confer on a magistrate's court the authority or jurisdiction first, to determine whether a described situation exists namely, whether the Chief Building Surveyor has certified to it that in his opinion immediate steps ought to be taken to prevent a building from falling down, and next, the additional authority to make an order of the kind described in the sub-section "authorising the Chief Building Surveyor either to demolish the building or to take such other steps as appear to the Chief Building Surveyor to be necessary to render the building secure. . . ."

In respect of the first authority or jurisdiction conferred on a magistrate's court by section 63(4), the magistrate's court must therefore determine whether a certificate received by it emanates from the Chief Building Surveyor, and, if so, whether such a certificate contains the opinion of the Chief Building Surveyor "that immediate steps ought to be taken to prevent" a specified building "from falling down". It is clear that if such a certificate fails to specify that in the opinion of the Chief Building Survey or immediate steps ought to be taken to prevent a specified building from falling down the magistrate's court will then have no authority or jurisdiction to authorise its demolition or effective repairs to it. The existence of a certificate in compliance with the requirements of the sub-section is therefore a condition precedent to the authority or jurisdiction of a magistrate's court to make an order under the sub-section. If a magistrate's court makes an order where there is no such certificate it will clearly be an order made in excess of the authority or jurisdiction of the magistrate's court.

A magistrate's court therefore in determining whether it has authority or jurisdiction to make an order under section 63(4) must necessarily construe this particular sub-section of the statute and it is a well known rule that the construction of a statute is always a matter of law. That being so, a magistrate's court in my judgment, is performing a judicial function and not a purely executive (i.e. administrative) act and is therefore under a duty to act judicially in respect of its authority or jurisdiction to determine whether a situation exists which empowers it to make an order under the latter part of the sub-section.

The next question is whether the 9th magistrate's court acted in excess of its jurisdiction in making the two orders complained of.

On the facts of this case the certificate in question certifies that the building is "in danger of collapse". Is it a certificate as required by section 63(4)? In my opinion not. A building may be in "danger of collapse" and yet may not be in such a state or condition "that *immediate* steps ought to be taken to prevent" it from collapsing. In other words there is a clear distinction in my opinion between a building that is in danger of collapse and a building that is in imminent danger of collapse and it is only if the Chief Building Surveyor is of the opinion that the latter condition of the building prevails and so certifies that there can be a certificate in compliance with the terms of sub-section (4) of section 63. Accordingly, the 9th magistrate's court acted in excess of its jurisdiction in making the two orders which the applicant seek to quash by *certiorari*.

The conclusion I have arrived at that as a matter of construction the powers conferred on a magistrate's court by section 63(4) carry with them a duty on the part of that court to act judicially is consistent with the well established principle that *prima facie*, where an established court of justice makes an order which on the face of it is in excess of its jurisdiction the remedy of *certiorari* will ordinarily lie. It would in my opinion be wrong for this court to hold that the Legislature intended an established court of justice, e.g. a magistrate's court, to perform a purely executive act unless that intent is made manifest in clear and unambiguous language. In my view, having regard to the terms of the whole of section 63 and in particular sub-section (3), the Legislature cannot have intended a magistrate's court while acting under sub-section (4) to perform a purely executive (i.e. administrative) act.

In the result the order *nisi* will be made absolute.

Order nisi made absolute.

Solicitors: *Drew & Napier.*